

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Interpretation of the Telephone Consumer)	CG Docket Number 18-152
Protection Act in light of the D.C. Circuit's)	
ACA International decision)	
)	
Rule and Regulations Implementing the)	CG Docket Number 02-278
Telephone Consumer Protection Act of 1991)	

REPLY COMMENTS BY JOHN A. SHAW

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Introduction

The following reply comments are in response to the Commission's request for comments in Public Notice DA 18-493¹ and in reply to other comments. I am not commenting on the definition of ATDS or on reassigned numbers. I am commenting only on revocation of prior express consent and the interpretation of the word "persons".

How a called party may revoke prior express consent to receive robocalls.

I do not believe that a caller should be allowed to unilaterally prescribe the exclusive means for consumers to revoke their consent. I particularly oppose any scheme that would require that the called party place another phone call, send email, or send a letter.

For example, in Dial America's comments they suggested a framework that would allow a caller to designate a "phone number at which individuals may make an opt-out request during *normal business hours*." and a telephone number that the consumer may call at any time to opt-out during a *non-telemarketing* prerecorded message".² This places the responsibility on the called party to take additional action to revoke consent.

In their comments, NCTA³ asks that callers should be able to provide a website or phone number to call if they wish to revoke their consent. This also places the responsibility on the called party to take additional action to revoke consent. I do not agree with NCTA that the "Commission should also make clear that callers and consumers also may agree to a binding consent revocation method as a matter of contract."⁴ As the ACA court said "It is undisputed that consumers who have consented to receiving calls otherwise forbidden by the TCPA are entitled to revoke their consent."⁵ Any prior consent to be called should be revocable.

The Independent Community Bankers of America ("ICBA") comment that opt-out attempts that deviate from a procedure *implemented by the caller* are unreasonable and should not constitute an effective revocation.⁶ To require that the called party adhere only to procedures implemented by the caller is an unreasonable limitation to the right to revoke consent.

The Commission's approach "through any reasonable means clearly expressing a desire to receive no further messages from the caller." has been upheld by the D.C. Circuit Court in their ACA

¹ See Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of D.C. Circuit's ACA International Decision, CG Docket Nos. 18-152 and 02-278, Public Notice DA 18-493 (rel. May 14, 2018) ("TCPA Public Notice").

See also *ACA Int'l. v. FCC*, No. 15-1211, 885 F.3d 687 (D.C. Cir. 2018). ("ACA")

² Comments of DialAmerica Marketing, Inc., filed June 13, 2018 to dockets 02-278, 18-152, and 18-493. ("DialAmerica Comments") at 10. (*emphasis added*)

³ Comments of NCTA – The Internet & Television Association ("NCTA Comments") to dockets 18-152 and 02-278, filed June 13, 2018, at 9.

⁴ NCTA Comments at 10.

⁵ ACA at 709.

⁶ See Comments of The Independent Community Bankers of America ("ICBA"), filed June 13, 2018 to dockets 02-278, 18-152. ("ICBA Comments") at 6. (*emphasis added*)

decision.⁷ The Commission should continue its interpretation made in its 2015 Declaratory Ruling⁸ and allow the called party to revoke consent by stating “do not call me again”, “take me off your list”, “stop calling”, or words to that effect during any live conversation or recorded message in a phone call.

I agree with DialAmerica that called parties should be able to revoke consent, or opt-out, of text message conversations using the CTIA recognized keywords.⁹

Reconsideration of the interpretation of “person”

The Commission seeks comment¹⁰ on whether federal government contractors, regardless of their status as common-law agents, are “persons” under the TCPA¹¹.

I agree with the position taken by the National Consumer Law Center in its petition¹² that federal government contractors are “persons” under the TCPA. The text of that law makes clear that government contractors are subject to the law’s prohibitions. Congress has defined the term “person”, as used in the TCPA, to include, “unless the context otherwise requires,” an “individual, partnership, association, joint-stock company, trust, or corporation.”¹³

Conclusion

I thank the Commission for the opportunity to reply to comments. I request the Commission to clarify that a called party may revoke consent to be called by any reasonable means and that the term “persons” applies to federal government contractors.

Respectfully submitted,

/s/

John A. Shaw

⁷ See ACA at 709

⁸ 2015 Declaratory Ruling, 30 FCC Rcd. at 7989-90 ¶ 47,

⁹ See DialAmerica comments at 10, note 50.

¹⁰ TCPA Public Notice at 4.

¹¹ The Telephone Consumer Protection Act, 47 U.S.C. § 227.

¹² Petition of National Consumer Law Center et al. for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration, CG Docket No. 02-278 (filed July 26, 2016) at 2.

¹³ 47 U.S.C. § 153(39).